IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (PIL) NO. 3060 OF 2005

1. Narinder Nayar & 3 ors.] .. Petitioners

Versus

1. Bombay Municipal Corpn. & 5 ors.] .. Respondents

Mr. Mukesh M. Vashi for the petitioners.

Mrs. P.A. Purandare for the respondent No.1.

Mr. R.M. Sawant, GP for respondent No.2-State.

Mr. Aspi Chinoy, senior counsel, Mr. Nitin Thakkar, senior counsel with Mr. Arif Y. Bookwala and Tanwi Gandhi, Anant Ranwal i/b M/s. M. Gandhi & Co. for respondent No.5.

CORAM: R.M. LODHA &
ANOOP V. MOHTA, JJ.

DATED: 22ND FEBRUARY, 2006

P.C. :

. Heard Mr. Mukesh Vashi, the learned counsel for the petitioners, Mrs. P.A. Purandare, the learned counsel for the Bombay Municipal Corporation and Mr. Aspi Chinoy, the learned senior counsel for respondent No.5.

2. During the course of admission hearing, we

observed that the sanction of building plans in respect of the subject property viz. Cama Bungalow situate on Doongersey Road, Malabar Hill, Mumbai to have recreation area on the podium, *prima facie*, did not seem to be legal, Mr. Aspi Chinoy, the learned senior counsel for respondent No.5 submitted that in the light of the observation made by us, the respondent No.5 shall apply for fresh permission of the building plans providing recreation area on the ground and that a copy of the modified plan shall be given in advance to the Advocate for the petitioners.

3. As regards the trees standing on the subject land, Mr. Aspi Chinoy submitted that the respondent No.5 shall apply afresh to the Tree Authority for cutting down the trees on the subject property, if necessary, and that intimation of the said application shall also be given in advance to the petitioners.

4. In view of the submissions made by Mr. Aspi Chinoy, the learned senior counsel for respondent No.5, we are satisfied that the following order shall meet the ends of justice:

O R D E R :

(i) That the respondent No.5 shall not proceed with the construction on the basis of the building plans in respect of the subject property sanctioned by the Bombay Municipal Corporation that provides for recreation area on the podium.

(ii) The respondent No.5 shall be at liberty to submit modified building plans providing for recreation area on the ground. Copy of the modified building plans shall be given to the Advocate for the petitioners. Upon submission of the modified building plans, the Bombay Municipal Corporation shall process the said building plans in accordance with law.

(iii) The respondent No.5 is at liberty to make a fresh application to the Tree Authority for cutting the trees on the subject property and copy of such application shall also be given in advance to the Advocate for the

petitioners. The Tree Authority, before passing any order on such application, shall hear the petitioners and pass an order in accordance with law.

5. Writ Petition is disposed of accordingly.

Sd/-
[R.M. LODHA, J.]

Sd/-
[ANOOP V. MOHTA, J.]